

COPY

RESOLUTION NO. 32-2010

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OMAK
APPROVING AN INTER-GOVERNMENTAL COOPERATION AGREEMENT
WITH THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION
FOR CONSTRUCTION AND OPERATION OF A DANCE PAVILION WITHIN
OMAK EASTSIDE PARK**

WHEREAS, RCW 39.34.020 authorizes public agencies within the State of Washington to exercise their powers jointly with certain other public agencies, including any Indian tribe recognized as such by the federal government; and,

WHEREAS, the Indian Encampment and traditional dancing have been a part of the Omak Stampede event since the inception of the Omak Stampede event which has been held in Eastside Park since 1935; and,

WHEREAS, the City's long term development plan for Eastside Park has included construction of a permanent facility to be the venue for the performance of the traditional dances and other displays of the Tribes' traditions as well as for other uses that would benefit from the availability of a large covered area; and,

WHEREAS, the Tribes have secured the resources to construct an appropriate permanent facility for their activities during the Stampede, and for other uses; and

WHEREAS, the Tribes have agreed to construct such a facility within Eastside Park with the understanding that they will own the structure and have priority for use of the facility during the Stampede events, and other times as may be prearranged; and that at other times, other parties will have equal access to schedule and use the facility as any other City Park Facility, which scheduling will be done by and through the City's regular scheduling processes.

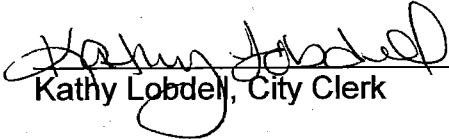
NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Omak that the **INTER-GOVERNMENTAL COOPERATION AGREEMENT: FACILITIES AGREEMENT FOR EASTSIDE PARK DANCE PAVILION**, a copy of which is attached hereto as **Exhibit "A"** is hereby approved and the Mayor is authorized to execute the same on behalf of the City.

PASSED AND APPROVED this 3rd day of May, 2010.

SIGNED:

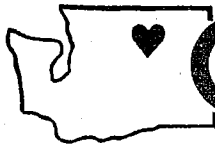
Cindy Gagné
Cindy Gagné, Mayor

ATTEST:


Kathy Lobdel, City Clerk

APPROVED AS TO FORM:


Michael Howe, City Attorney



City of Omak

In the Heart of the Okanogan

State of Washington

2 North Ash
(509) 826-1170

P.O. Box 72

Omak, WA 98841

Fax: (509) 826-6531

email: kathyl@omakcity.com

May 21, 2010

Colville Confederated Tribes
Michael O. Finley, Chairman
P.O. Box 150
Nespelem, WA 99155

RE: Intergovernmental Coop. Agreement - Eastside Park Dance Pavilion

Dear Chairman Finley,

Omak City Council, in regular session May 3, 2010, passed Resolution 32-2010, approving the Intergovernmental Cooperation Agreement with the Colville Confederated Tribes for the Eastside Park Dance Pavilion.

Enclosed you will find a copy of the Resolution, and the fully-executed original agreement.

We are pleased that this effort has been so successful and are anxiously watching the construction of the facility.

Sincerely,

Kathy Loddell, CMC
City Clerk
City of Omak

Encls.

ORIGINAL
COPY

INTER-GOVERNMENTAL COOPERATION AGREEMENT:
FACILITIES AGREEMENT FOR EASTSIDE
PARK DANCE PAVILION

THIS AGREEMENT, made and entered into this 31st day of May, 2010, by and between the **City of Omak**, a municipal corporation of the State of Washington, hereinafter referred to as "**City**", and the **Confederated Tribes of the Colville Reservation**, with headquarters at Nespelem, Okanogan County, Washington, hereinafter referred to as the "**Tribes**", and collectively referred to as "**the parties**".

Whereas, RCW 39.34.020 authorizes public agencies within the State of Washington to exercise their powers jointly with certain other public agencies, including, pursuant to RCW 39.34.020, any Indian tribe recognized as such by the federal government; and

Whereas, pursuant to RCW Chapter 39.34, the Interlocal Cooperation Act, the parties hereto desire to enter into an agreement with one another for joint and cooperative action in construction and operation of a dance pavilion, also referred to hereinafter as "**facility**" to be located in the Omak Eastside Park; and

Whereas, the construction, maintenance and operation of a dance pavilion within the Omak Eastside Park has been deemed by the governing bodies of the respective parties hereto to be desirable,

Now, Therefore,

It is hereby agreed between the parties as follows:

1. The Tribes will construct and own, and the City will operate and maintain, a dance facility in the Omak Eastside Park.
2. The parties have agreed on the location of said facility within the Omak Eastside Park and the City hereby grants reasonable access to the Omak Eastside Park to the Tribes, its officers, agents, contractors, and other personnel necessary for the construction of the facility at that location.
3. The Tribes agree to construct said facility at its sole cost and expense and pursuant to design and location approved by both parties. The City shall be responsible for providing water and electricity to said facility. The volume and pressure of water shall be as determined by the City and the electrical facilities to be installed and the amperage available to said facility shall be as mutually agreed by the parties and within the capabilities of the existing electrical infrastructure. The City shall be solely liable for any damages to the facility, or injury to users of the facility, caused by the negligent or

intentional acts of its officers, agents, employees or other personnel related to installation of water and electrical service to, or future provision of water and electricity to, the facility.

4. Said facility shall be constructed as a covered, open air facility, with no or few exterior walls so as to allow a variety of uses that support and enhance recreational opportunities and otherwise meeting the conditions of the Resource Conservation Office of the State of Washington.

5. From and after date of completion of said facility, the City agrees to add said facility to its comprehensive fire and liability insurance policies under the City's present insurance program and subject to all terms, conditions, and policy limits thereof. The City shall provide a copy of the policy to the Tribes, specifically naming the facility as insured, and shall immediately notify the Tribes if at any time the policy should for any reason lapse or the facility for any reason whatsoever is no longer covered by the City's policy, at which time this Agreement, at the Tribes' discretion, may be terminated by five (5) days' written notice to the City, and the Tribe shall have immediate access to facility to remove it from the Omak City Park.

6. The term of this Agreement shall be for a period of thirty (30) years from and after the date hereof; however, at its own expense, the Tribes may, with thirty (30) days written notice to the City, have access to the facility to dismantle and remove the facility from its Omak Park location and at such time as the facility is removed, this Agreement shall terminate.

7. If the facility is more than fifty-percent (50%) destroyed by fire, flood, or any other cause, the Tribes may, at its option, refuse to rebuild the facility or refuse to allow the City to rebuild the facility under the terms of the City's insurance policy or to use other funding sources to rebuild the facility, and, with thirty (30) days written notice to the City, the Tribes shall have access to the facility to remove it from its Omak Park location, and this Agreement shall terminate.

8. In the event that the Tribes elects to remove the facility pursuant to the terms outlined in Sections 5 or 6 above, or refuses to allow the reconstruction of a damaged structure in accordance with Section 7 above, the Tribes agrees to remove all portions of the structure and return the site to its contour and condition, as it exists at the commencement of this agreement, in a timely manner, and scheduled so as not to interfere with the operations of the park during the annual Omak Stampede and associated events.

9. Each party hereto shall have access to and use of said facilities, which shall be available for public recreational purposes for all age groups. Equal access to the facility shall be allowed for all user groups; provided, however, that the Tribes shall be allowed to reserve said facility for preplanned events scheduled by the Tribes, with a

minimum of fourteen days advance notice to the City. Said preplanned events shall always include, but not be limited to, the 4-day period of the Omak Stampede and Indian Encampment (typically in August), commencing at least six days in advance of said 4-day period and continuing for at least three days thereafter. The Tribe and the City agree to meet each year during January or February to determine what events the Tribe wishes to sponsor using the facility, and the days that will be reserved for those uses. Thereafter, the City provide for scheduling of the facility by members of the general public, including tribal members wishing to use the facility for their personal gatherings as provided in Section 10 hereof.

10. Any individual or user group shall have an equal opportunity to reserve said facilities. A policy and/or applicable rules for the issuance of permits for use of the facilities will be developed jointly by the parties. The City shall be the administrative agency to which applications for use of the facility shall be made in writing. The City shall not express a preference for users on the basis of residence, except that reasonable differences in admission and other fees may be maintained on the basis of residence. If a differential rate structure is adopted by the City based on residency, then events scheduled by enrolled members of the Colville Confederated Tribes will be charged the same rates as residents of the City of Omak regardless of the actual residency of the applicant.

11. The Tribes agree to hold and save harmless the City from all loss, damage, liability or expense, including expense of litigation resulting from any actual or alleged injury to any person or from any actual or alleged loss of or damage to any property caused by or resulting from any act or omission of Tribes, including its officers, agents, employees, guests, invitees and/or visitors, when the Tribes is using the facility. The City likewise agrees to hold the Tribes harmless from all loss, damage, liability or expense, including expense of litigation resulting from any actual or alleged injury to any person or from any actual or alleged loss of or damage to any property caused by or resulting from any act or omission of the City, including its officers, agents, employees, guests, invitees and/or visitors or when any person or entity other than the Tribes is using the facility as authorized by the City and under paragraph 3 above. Nothing herein may be construed as a waiver, limited or otherwise, of the Colville Tribes' inherent sovereign immunity.

12. Both parties agree to extend their utmost efforts to cooperate with each other so as to make the facility available to the other party and to the general public as authorized by the City when that use does not conflict with previously scheduled events of the Tribes. The Tribes shall be responsible for providing adequate supervision of the facility during all times that said facility has been reserved by and is being used by the Tribes. The City likewise agrees to be responsible for insuring adequate supervision of the facility when being used by members of the general public as authorized by the City, and to be liable for any damages to the facility or injury to persons caused as a result of unauthorized use of the facility, or vandalism of the facility.

13. Normal operation and maintenance expenses necessary to rectify reasonable wear and tear shall be the responsibility of the City. To the extent the facility is damaged or injured by negligent or intentional acts of either party or their officers, agents, employees, guests, invitees, and/or visitors, then that party shall be liable for said loss and damage and shall be responsible for the repair or replacement thereof.

14. The City may impose a charge and other conditions for the use of said facility. The amount of said fees or charges shall be in the sole discretion of the City; provided, however, that said fees and charges shall not be assessed against the Tribes for their use during the period of the Omak Stampede, or for other cultural events.

15. It is understood by and between the parties that title to the real property on which said facility shall be located is held by the City, and construction, operation, and maintenance of the dance pavilion thereon shall not be construed as a grant of interest in said real property as an owner, joint tenant, or tenant in common. It is similarly understood by and between the parties that ownership of the facility itself is held by the Tribes and, pursuant to paragraph 5 above, shall be insured upon its completion by the City.

16. The construction of said facility and funding therefor shall be by the Tribes and said construction shall not be deemed a public works project of the City.

17. No separate legal or administrative entity is intended to be created hereby. As indicated above, the construction phase of this project shall be undertaken by the Tribes and, upon completion and acceptance of the construction phase of the project, the City shall undertake the administration and maintenance of the facility, subject to the limitations set forth herein.

18. This Agreement, or any portion thereof, shall not be assigned without the written consent of the other party.

19. The parties agree that any changes to this contract shall be mutually agreed between the parties and shall be in writing.

This Agreement shall be in full force and effect and binding upon its execution.

City of Omak, a municipal corporation
Of the State of Washington:

By Cindy Gagne
Cindy Gagne, Mayor

**Confederated Tribes of the Colville
Reservation:**

By Michael O. Finley for
Michael O. Finley, Chairman 4-28-10

Colville Business Council

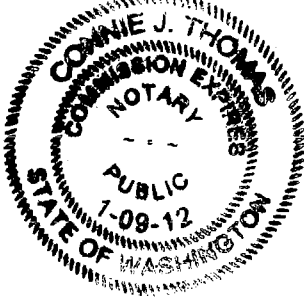
Attest Kathy Loddell
Kathy Loddell, Clerk


STATE OF WASHINGTON)

: ss

County of Okanogan)

I certify that I know or have satisfactory evidence that **Cindy Gagne and Kathy Lobdell** are the persons who appeared before me, and said persons acknowledged that they signed this instrument and on oath stated that they were authorized to execute the instrument and acknowledged it as the Mayor and Clerk of the City of Omak to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.




Connie J. Thomas (printed name)

Notary Public in and for the State
of Washington residing at Omak
My commission expires 1-9-12

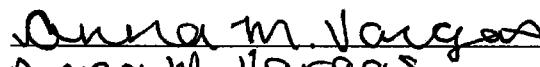
STATE OF WASHINGTON)

: ss

County of Okanogan)

I certify that I know or have satisfactory evidence that ~~Michael O. Finley~~ ^{John Stensgar} is the person who appeared before me, and said person acknowledged that he signed this instrument and on oath stated that he was authorized to execute the instrument and acknowledged it as Chairman of the Colville Business Council to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.




Anna M. Vargas (printed name)
Notary Public in and for the State
of Washington residing at Nespelem
My commission expires 10-9-13

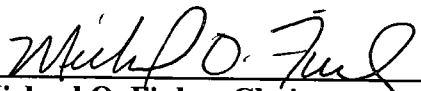
**EMERGENCY
RESOLUTION**

WHEREAS, it is the recommendation of the Community Development Committee to enter into an Inter-Government Cooperation Agreement with the City of Omak which will serve as a facilities agreement for the Eastside Park Dance Pavillion. The attached "facilities agreement" has gone through review with the Office of Reservation Attorneys; further to authorize the Chairman or his designee to sign said agreement.

THEREFORE, BE IT RESOLVED, that we, the Colville Business Council, by authority of Resolution 1991-431 (10 affirmative signatures on this recommendation sheet, an emergency) this 28th day of April, 2010, acting for and in behalf of the Colville Confederated Tribes, Nespelam, Washington, do hereby approve the above recommendation of the Community Development Committee.

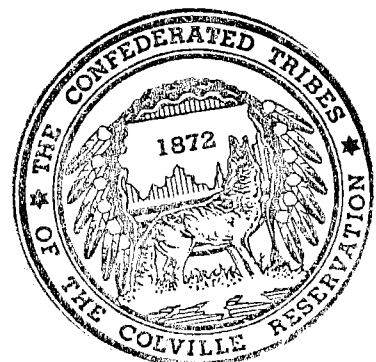
The foregoing was duly enacted by the Colville Business Council by a vote of **10 FOR 0 AGAINST 0 ABSTAINED**, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs in April 19, 1938.

ATTEST:



Michael O. Finley, Chairperson
Colville Business Council

cc: Ernie Williams Committee Chair
CBC Recording Sec.
BIA Superintendent
Reservation Attorney
Dept. or Program: Planning





City of Omak

In the Heart of the Okanogan

State of Washington

2 North Ash
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Omak, WA 98841

Fax: (509) 826-6531

email: kathy@omakcity.com

MEMORANDUM

To: Omak City Council
Cindy Gagné, Mayor

From: Ralph Malone, City Administrator 

Date: April 30, 2010

Subject: Resolution No. 32-2010 – Approval of Inter-Governmental Agreement for Dance Pavilion

The attached Resolution No. 32-2010, A Resolution of the City Council of the City of Omak Approving an Inter-Governmental Cooperation Agreement with the Confederated Tribes of the Colville Reservation for Construction and Operation of a Dance Pavilion Within Omak Eastside Park is forwarded for your consideration.

The Confederated Tribes of the Colville Reservation has secured resources for the construction of a Dance Pavilion that would provide a permanent venue for their traditional dancing events held in conjunction with the Omak Stampede each year. The need for a structure of this type has long been recognized, and the Eastside Park Master Plan has included a site reserved for placement of this facility for a long time.

The Tribes have proposed an arrangement wherein they would construct the dance pavilion on a City-owned site within the Eastside Park in the general area that has been designated for this improvement, but the Tribes would own the actual improvement. The City would be responsible for the cost of the utilities used at the facility as they are for all utilities used in Eastside Park, and would maintain the structure. The Tribes would have first priority for use for their preplanned events, and they would be responsible for the control of management of the facility when it was being used for their sponsored events. At all other times the facility would be available for use by anyone, and would be under the management and scheduling of the City of Omak.

I support this Resolution and urge its adoption.